

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 10587 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE B.C.PATEL

and

MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

SUNDEK INDIA LTD

Versus

UNION OF INDIA

Appearance:

MR PARESH M DAVE for Petitioners

Mr. Kamal Mehta for the respondents

CORAM : MR.JUSTICE B.C.PATEL and

MR.JUSTICE A.L.DAVE

Date of decision: 18/01/99

ORAL JUDGEMENT : (Per B.C. Patel, J.)

Rule. Shri Mehta, learned counsel for the respondents waives service of the rule.

2. This Special Civil Application is filed against the order passed by the Customs, Excise & Gold (Control) Appellate Tribunal, West Regional Bench at Mumbai, mainly on the ground that the petitioner failed to deposit a sum of Rs.3,000/- within the period of four weeks and to

submit compliance report within five weeks from the date of the order. The petitioner, when the matter was called out, was not present before the Tribunal. Hence the appeal was dismissed under sec.35F of the Central Excise Act.

3. Mr. Dave, learned advocate appearing for the petitioners points out that the Division Bench of this Court in a reported decision in the case of Viral Laminates Pvt. Ltd. & another v. Union of India & others, 1998 (3) GLR 1944, has held that the part of Rule 20 of the Customs, Excise and Gold (Control) Appellate Tribunal (Procedure) Rules, 1962, which enables the Tribunal to dismiss an appeal for default of appearance as well as proviso to Rule 20 is ultra vires the provisions of sec.35C(1) of the Central Excise and Salt Act, 1944 as well as sec.129B(1) of the Customs Act, 1962. The Division Bench of the Court further held that the Appellate Tribunal has no power to dismiss an appeal for non appearance of the appellant and appeal should be decided on merits. In view of the aforesaid order, the interim order at Annexure 'A' is required to be quashed and set aside. So far as the requirement of deposit is concerned, it is stated at the Bar by Shri Mehta, learned advocate for the Department that in fact the petitioner has given a personal bond of Rs.3000/-. That shall be taken into consideration while disposing of the application.

4. The petition stands allowed accordingly with no order as to cost. Rule is made absolute accordingly.

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